

PURCHASING TERMS AND CONDITIONS

1. **Acceptance–Agreement.** Seller's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face and back hereof. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposal shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this purchase order shall be deemed material and are objected to and rejected, but this purchase order shall not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods.
2. **Quality, Quantity, Deliveries, and Packing.** In the event no quality is specified on the face hereof, the goods delivered and/or services rendered hereunder must be of the best quality. The quantity of goods indicated on the face hereof must not be exceeded without written approval of Purchaser. Seller shall ship and deliver goods and render services hereunder on the date or dates specified on the face hereof, unless prior written approval of any change in such date or dates is given by Purchaser. No charge will be paid by Purchaser for packing, boxing, or cartage, unless specified on the face hereof. Loss of or damage to any goods not packed in such a manner as to insure proper protection to same shall be borne by Seller. Each package of goods shipped must contain a memorandum showing shipper's name, contents of package, and the purchase order number on the face hereof.
3. **Inspection.** Notwithstanding prior payment and/or inspection by Purchaser, all shipments of goods and/or all services rendered hereunder shall be subject to inspection by and approval of Purchaser after arrival of such goods at the delivery point specified on the face hereof and/or after such services have been rendered, taking into consideration, if there are delays in inspection, the seasonal nature of Purchaser's business.
4. **Rejected Shipments and Purchaser's Remedies.** If the goods shipped or to be shipped and/or services rendered or to be rendered hereunder are rejected, in whole or in part by Purchaser by reason of Seller's failure to comply with any of the terms, conditions and/or specifications contained herein, Purchaser, after so notifying Seller in writing, may: either return the rejected portion of such goods and/or the rejected portion of such services to Seller at Seller's expense or hold the same for such disposal as Seller shall indicate, without invalidation the remainder of this purchase order; or Purchaser may reject the entire services and cancel this purchase order for any undelivered balances of goods and/or unrendered services.

If goods shipped or to be shipped and/or services rendered or to be rendered hereunder are rejected, as hereinabove provided, Purchaser may purchase like goods elsewhere and/or obtain like services elsewhere and charge Seller with any loss or damage (either direct or indirect) sustained by Purchaser (including, but not by way of limitation, any difference between the price paid by Purchaser for such like goods and/or services and the price specified in the face hereof) plus all costs of collecting the same (including, but not by way of limitation, attorneys' fees and court costs).

Purchaser shall not be obligated to pay for any goods shipped and/or services rendered which are rejected by it.

5. **Invoices.** No invoice will be paid by Purchaser unless it carries the following certificate: "Seller represents that, with respect to the production of the goods and/or the performance of the services covered by this invoice, it has fully complied with the Fair Labor Standards Act, as amended.
6. **Patents.** Seller warrants that the goods furnished hereunder do not infringe any United States or Canadian patent; that it will defend any suit that may arise in respect thereto; and that it will defend, indemnify and hold Purchaser harmless from and against any and all loss which Purchaser may incur (including, but not by way of limitation, attorneys fees and court costs) by reason of the assertion of any patent rights with respect to the goods furnished hereunder whether by reason of Purchaser's purchase, use, or otherwise.
7. **Health and Safety.** All items to be supplied hereunder by Seller shall conform in all respects to the requirements of applicable insurance and governmental health and safety regulations, including regulations administered by OSHA.
8. **Responsibility and Indemnification.** All work to be performed by Seller, hereunder shall be performed entirely at the risk of Seller and Seller shall defend, indemnify, and hold harmless Purchaser, its agents, servants, representatives, and employees from and against any and all loss (including without limitation, loss of use), liability, damage, claims, demands, actions, and/or proceedings and all costs and expenses connected with any thereof (including, without limitation, attorneys' fees) of whatsoever nature on account of any and all damage to or loss or destruction of any property (including, without limitation, property of Purchaser), or injury to or death of any person (including, without limitation, employees of Purchaser) arising directly or indirectly out of or in connection with the performance of Seller of such work. Without limiting the generality of the foregoing, Seller agrees to indemnify and hold Purchaser harmless from and against all claims and liens of any and all persons based upon the furnishings of labor and/or materials in connection with the goods sold and/or services rendered by Seller hereunder.
9. **Equal Employment Opportunity.** Seller hereby agrees to comply with the provisions set forth in paragraphs (1) through (7) of section 202 of Executive Order 11246 and all similar orders, rules, registrations and laws prohibiting discrimination in employment, and further agrees that it will not discriminate on the basis of Race, Creed, Color, Sex, National Origin, or Age.

10. **Illegal Pickets.** Seller shall promptly exercise all legal rights and remedies afforded by applicable law to remove and suspend illegal pickets.
11. **Continuing Guaranty Under Federal Food, Drug and Cosmetic Act.** If the material furnished hereunder is a food, drug, cosmetic or device (as such terms are defined in the Federal Food, Drug and Cosmetic Act), such material comprising each shipment or other delivery made hereunder by Seller to, or on the order of the Purchaser, is hereby guaranteed as of the date of such shipment or delivery, to be, on such date, not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, and not an article which may not under the provisions of Section 404 or 505 of such Act, be introduced into interstate commerce.
12. **Incorporation by Reference.** Any clause required to be included in this document by previous inclusion in an Invitation to Bid, Request for Proposal or Written Quotation and valid federal, state, local law or administrative rule or regulation having the effect of law shall be deemed to be incorporated herein.
13. **Compliance with Law.** Seller shall comply with all applicable federal, state and local laws, regulations and orders, and Seller will furnish Purchaser with a warranty in a form satisfactory to Purchaser to such effect if requested by Purchaser.
14. **Warranty.** Seller warrants the material furnished hereunder (a) to be free from defects in title, labor, material or fabrication, (b) to conform to applicable specifications, drawings, samples or other descriptions given, (c) to be suitable for the purpose intended, (d) to be of merchantable quality, and further warrants that material of Seller's design will be free from defects in design.
15. **Insurance.** Seller shall carry insurance protection sufficient to meet all the liabilities that are mentioned herein.
16. **Events Not Within Control of Purchaser.** If by reasons of fire, earthquake, flood, explosion, accident, difference with or inability to secure workmen, shortages of energy or raw materials, equipment, labor or transportation, production shutdown, or curtailment, lack of facilities, act of God, or of any public enemy, voluntary or involuntary compliance with any valid or invalid law, order, regulation, request, or recommendation of any government agency or authority, or other cause beyond the immediate and direct control of Purchaser, whether or not the kind nature hereinbefore specified, Purchaser shall be delayed in whole or in part in taking any delivery or deliveries of goods and/or accepting the rendering of services as herein specified, Purchaser may, by giving written notice to Seller:
 - a. Cancel this purchase order in whole or in part as to any undelivered portion of such goods and/or unrendered portion of such services; or
 - b. Suspend, in whole or in part, deliveries of goods and/or the rendering of services during the continuance of and to the extent of such cause.